EXHIBIT I

DOCKETED

AUG 1 4 2007

By K. Silva No SAZUSZ 2672

Court of Appeal, Fifth Appellate District - No. F052019 S153106

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re SYLVESTER STRONG on Habeas Corpus

The petition for review is denied.

SUPREME COURT FILED

AUG - 8 2007

Frederick K. Ohlrian Clark

DEBLIEV

GEORGE

Chief Justice

IN THE SUPREME COURT STATE OF CALIFORNIA

In the matter of:

SYLVESTER STRONG,

Perition for neview.

CASE No.

(Appellate Court No. F052019,
Fifth Appellate District;
Sup. Ct. No. 380750-0,
Fresno County)

PETITION FOR REVIEW

After Decision of the Court of Appeal, Fifth Appellate District.

Denjing Writ of Habeas Corpus on May 24, 2007

Sylvescer Strong, D-99287
Correctional Training Facility
P.o. Box 689
Soledad, CA 93960

Petitioner in pro per

Case 3:07-cv-04927-SI Document 9-10

文化 Andrew 14 (4) 12 (4) 12 (4) 12 (5) (5) 12 (5) 12 (5) 13 (6) 14 (6) 14 (7) 14 (7) 15 (7) 15 (7) 15 (7) 主要文化内等主要文化。例如,这个文化的特殊的问题,它的第三文程列,更创造性有能**含度的**类的。在这种文化,一样历代主义程, 。"我中国的内部,但可能是实现的,他就会的规则,但能是实现实现的。""他们想要的过度会想在这一点点,是否是**没**有的。"**位置** 京的第三大学的女人的复数亲自自身的一点,这个是一种自己的自身的一类的文化的**对**数据的一个一位的对象。一定在数据数据 2. 使工程包含物等等的。1、对关特别整个人支撑模型1种。一张位置155、对象效应工艺。 અજ્ઞાનું તાલું કરતા છે. તાલું જે જે તે કે કે માટે જે મુખ્યત્વના મુખ્યત્વે છે. જે જે એ જે માટે કે ફોર્ફ્ટ જે માટે જે જે અફેટ TARRED TO TERME THEERESTULPER BOMBETECHOOU RATE BY TO HEA

and hard to be a factor of the STATE OF CALIFORNIA

In the matter of:

CASE No.

SYLVESTER STRONG.

ARTIGA VI GO MAR

Appellate Court No. F052019, Fifth Appellate District; Siri of ned Sap. Ct. No. 380750-0,

blotame is their workings. Peririon for Review

Fresno County) .. e.

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TO THE HONORABLE CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT

AND THE ASSOCIATE JUSTICES OF THE COURT:

The imaginers of the state of the comments.

COMES NOW Sylvester Strong (hereafter) Retitioner) erespectfully requesting review of the decision of the Countrol Appeal, Bifthe of a Mappellace District, filed on Maj 24, 2007 (ATTACHMENT A) SE SET ្នុងអ្នក្សាស្ត្រ សារស្ត្រីស្សារ ស្រុកស្រែស្ត្រ ស្ត្រា ស្នេ អ៊ុលសេខ សេលា ជាស្មាលស្រាល់ពីព័រ ស្ថានមានសេខមេសាស

STREET OF THE THE PROPERTY OF THE PROPERTY OF

- GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE AND THE TUNETED STATES CONSTITUTION FOR THE GOVERNOR OF CALIFORNIA CONSTITUTION FOR THE GOVERNOR OF CALIFORNIA TO REVERSE THE BOARD OF PAROLE HEARINGS GRANT OF PAROLE ON A MODICUM OF EVIDENCE WHEN RECENT UNLITED STATES A LAW WAY TO THE SUPREME COURT PRECEDENCE MANDATES "A PREPONDERANCE OF THE PREVIDENCES STANDARD OF EXECUTIVE DECESIONS WHEN A PRESONER 88 HAS A "LIBERTY INTEREST" IN THE OUTCOME OF THE el transfelen i errogianto másta e espande, el el velt STAN PROCEEDINGS?
- WAS IT A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS AND MADE IN CO. 2. GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION FOR THE GOVERNOR OF GALIFORNIA TO REVERSE THE BOARD OF PAROLE HEARINGS GRANT OF PAROLE FIRMHEN THE GOVERNOR RELIED SOLELY ON TIMMUTABLE FACTORS THAT WALLED HAVE ZERO PREDICTIVE VALUE OF PETITIONER'S CURRENT the color threathto house is afetter by the color of the thresh of the after of the

3. WAS IT A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION FOR THE GOVERNOR OF CALIFORNIA TO REVERSE PETITIONER'S GRANT OF PAROLE WHEN PETITIONER ENTERED INTO A CONTRACT WITH THE STATE OF CALIFORNIA FOR SECOND DEGREE MURDER AND HAD SATISFIED THE LEGISLATIVELY PRESCRIBED PUNISHMENT FOR THE OFFENSE AND THERE WAS NO EVIDENCE PETITIONER IS A CURRENT THREAT TO PUBLIC SAFETY?

TT

NECESSITY FOR REVIEW

This Peririon for Review should be granted because it raises a question of first impression to this Court since Hamdi v. Rumsfeld (2004) 542 U.S. 507, 124 S.Ct. 2633, holding that the standard of proof for an administrative hearing is "a preponderance of the evidence" standard with the standard of judicial review being the "some evidence" standard, clarifying the ambiguity of Superintendent v. Hill (hereafter Hill) (1985) 472 U.S. 445. Thus, this Court needs to nevisit In me Rosenkrantz (2002) 29 Cal. 4wh 616.

The second question needs to be servied by this Count to provide consistency throughout the state in the varying appellate districts.

A prisoners liberry should not depend on which county on appellate district he on she is out of and which judge he on she may get on any given day. This Count's simply denying review on writes granting slowly in the less egregious cases are being dented relief simply because of the dounty on appellate district are sold spanted that they are patently anbitrany; thus, this Count is required to provide guidance.

The third question presented Is in dire need of guidance by Render no Branch and Branch and Branch or this Count to assure that contracts with the state in plea bargain agreements are honored by the Executive and defendants are not tricked

involpleading guilty to lesser offenses with where rectation of being punished for what was agreed to and not have their sentences increased by Executive fiathy ears later on greater elements of the offense of with the geometrutional safeguards of a trial and have the bound have safe with the geometrutional safeguards of a trial and have said have some the safe with the geometrutional safeguards of a trial and have said have said as a justification of the court of the geometrution and the safe with the same said as a justification to issue opinions of questions of statewide three ests (Call Rules of Court a Rule 29(a)(1)) and the said is a said to said the said

The facts are set out in the habeas compus at pages 6 through 11; incorporated herein by reference. In short. In a Harves plea (People v. Harvey (1979): 25 Cal. 3d. 754, 758) Peririoner entered into a plea agree; at "contract." with the state of California, to one count of second degree murder and one count of assault with a deadly weapon. The information to the charge of murder was to one count of second degree murder, charging Peririoner with the minimum elements of the offense, "malice aforethought" (see EXHIBIT, 2sto habeas corpus). The plea for second degree murder from ever being elevated to first degree, and therefore had a reasonable expectation of being punished for second degree murder, and no more. On September 12, 1988, Peririoner entered a plea of "no contest" to the minimum elements

Peririoher has been continuously imprisoned since the date of the instant offense, December 10, 1987. At the date of Perivioner parole suitability hearing at which he was found suitable for parole,

of the offense of second degree sunder (EXHIBIT 4 to habeas corpus).

.... **.**

LanMay 31. a2006 Tohe. had been imprisoned 19 Jears sand 3 months and With a beconducts credits. Petitionen has served the equivalent sofe 24 years. When whe Board of Parole Hearings (hereafter Board) stixed Peritioner's rerm and factored in conductoredits, whe "should chave ?been sparoled in in May of 2001. If Perivioner would have been convicted of first degree murder, he would have been eligible for parole 3 years ago. endire The victim of Peririoner's murdeniwas his wife; sinothe process of divoncing) (sperintoher svabbed his wife during ansargusent as the Peririoner called for medical assistance. His wife was DOA, and Peririoner surrendered himself at the scene, admirring to the offense.

ិទ្រសាស្ថា ស៊ី ខេត្តស្តេ ពីស៊ី ស៊ី មេខែសារ សេះ សារីស នៃសារ សេរី ពីរស ខេត្ត សុ ស ខេត្តសេរី ស្តេ ប៉ែ

makin The Governor relied heavily on the Probation Officer is Report! ofportal meterence to Lavelle Jones, and the finguities von Pericionen's wife wanting the chime scene sound like the Sharon Tare mugden scene. Peririoherhargued, and arrached rothischabeas corpus, the preliminary restimony of Lavelle Jones clearly demonstrating them POR is in gross error, and police reports states there were, "drops of blood, "obnot blood all over the wallshand floor and Moreover, the Governor states that Peritioner envened the house with knife in hand, but also refers to the police report finding the knife came from a butches block to Francia in the kirchen (1) Iro cannot be beckerh. The probate is the figure of

Should be made of the control of ARGUMENTS OF TREVIEW IN 18th of the vaccifator's

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^{. 1.00} WAS IT ADVIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS OF GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION FOR THE GOVERNOR OF CALIFORNIA TO REVERSE THE BOARD OF PAROLE HEARINGS GRANT OF PAROLE THON A MODICUM OF EVIDENCE. WHEN RECENTATURITED, STATES DEBURED DAR SUPREME COURT PRECEDENCE MANDATES "A PREPONDERANCE OF THE STANDARD OF EXECUTIVE DECISIONS WHEN A PRISONER HAS A "LIBERTY INTEREST" IN THE OUTCOME OF THE PROCEEDINGS?

re Rosenkrantz; supra; 29 Cal. 4th 616, 656, that due process requires that the Governor's decisions to reverse a finding of suitability for parole by the Board need be supported only by "some evidence."

The "some evidence" standard being the standard of proof. Petitioner asks; logically, if the standard of proof. "some evidence," and the standard of review is "some evidence," how then does the "some evidence" standard apply itself? Rosenkrantz requires revisiting.

Hilly supra, was ambiguous as to when the "some exidence" scandard applied -- ac the administrative decision level gor upons judicial neview? That ambiguity was clanified in the necent decision of Hamdi v. Rumsfeld. (2004) 542; U.S. 507, 124/S.Cr. 2633; at 2651; the High! Count"holding that the " [some evidence] standard therefore is ill suited to the situation in which a habeas peritioner has yes neceived no prior proceedings before any unibunal and had no prior opportunity to rebur the Executive's, factual assertions before a neutral decisionmaker. "The Board/Governor is not a "neutral" decisionmaker." That was necognized by the dissenters in Dannenberg, opining, the Governor has "little to gain and potentially much to ... lose by granting parole, and accordingly, the incentive to give only pro forma consideration to parole decisions is strong! (In re-Dannenberg (2005) 34 Cal. 4ch 1061, 1105). The Board is nothing more than an extension of the Governor's policies, finding less than one half of one pencent suitable for panole. 京师学者1年5月87日,万世家2000年中心中。 电影 有点

TAKE JUDICIAL NOTICE of the sister opinion in Cantillo v. Fabian

(2005) 701 N.W. 2d 763, in which the Minnesota Supreme Court, in
reviewing that state's "some evidence" standard in prison disciplinary

heanings, in light of Hamdi v. Rumsfeld, supra, 542 U.S. 507, and several federal circuit and sister state court decisions, held that the "some evidence standard is inappropriate for use by the DOC at the fact-finding level. We conclude that the preponderance of the evidence standard better process against an ennoneous deprivation of an inmate's liberty facerest in his supervised nelease" (Cantilo v. Fabian, supra, 701 N.W.2d, at 777, emphasis in original).

fact that the standard of proof mandated by the Board sown is negulations, having the fonce and effect of law, is a prepondenance of the evidence (Cal. Code Regs., tit. 15; \$22000(b)(50)). The but standard of review, that is assuming the standard of proof was a prepondenance of the evidence, is the "some evidence" standard.

Any evidence, however, that lacks any real probative value cannot constitute even "some evidence."

In that Handi v. Rumsfeld, supra, 542 U.S.: 507, 124 S.Cr. 2633, is United States Supreme Count precedence cleaning up the ambiguity in Hill that the standard of proof at the executive level is "a prepondenance of the evidence" and judicial review is then "some evidence." this Count needs to revisit Rosenknantz.

Whether by "a preponderance of the evidence" on "some evidence,"
the Board's decision was arbitrary, being unsupported by any evidence
Perintoner is a current threat to public safety.

2. WAS IT A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS
GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE
UNITED STATES CONSTITUTION FOR THE GOVERNOR OF CALIFORNIA
TO REVERSE THE BOARD OF PAROLE HEARINGS GRANT OF PAROLE
WHEN THE GOVERNOR RELIED SOLELY ON IMMUTABLE FACTORS THAT
HAVE ZERO PREDICTIVE VALUE OF PETITIONER'S CURRENT
THREAT TO PUBLIC SAFETY?

Assuming, angumendo, the "some evidence" standard will be the standard for both Executive level decisions and judicial neview, recently opined by the Second Appellace District in In ne Lee (2006) 143.Cal.App.4th 1400, 49 Cal.Rptn.3rd, at 1936-937:

"The test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. (Gal. Code Regs. tit. 15. § 2402, subd. (a) [parole denied if prisoner 'will pose an unreasonable risk or danger to society if released from prison'], see e.g. In re Scott (2005) 133 Cal. App. 4th 573, 595 ['The commitment offense can negate suitability [for parole] only if circumstances of the crime...rationally indicate that the offender will present an unreasonable public safety risk if released from prison'], but see In re Lowe (2005) 130 Cal. App. 4th 1405 [suggested 'some evidence' applies to the factors, not dangerousness].) Some evidence of the existence of a particular factor does not necessarily equate to some evidence the parolee's release unreasonably endangers public safety." (Emphasis in original.)

While it is true the commitment offense must be initially control of the second of the s considered and weighed by the Governor, it is just as true that the offense is not to be viewed in a vacuum as though it occurred only TO THE WARRING TO A STATE OF THE WALL THE BRANCH FOR THE THEFT WHEN THE STATE OF THE yestenday, but is to be placed into perspective nelative to time. "entailing primarily what a man is and what he may become nather redition with a few role from which is not be not been bounded by the state of the grant and the first contribute than simply what he has done" (Gneenholtz v. Inmates of Nebraska Connectional and Penal Complex (1979) 442 U.S. 1, 10). And, although adda cavitana i trea feele com ab expanse document in a caditation, a the commitment offense is a consideration in any particular case, Company laises of the case of young con-"Ir he behavior record of an inmare during confinement is chirical The term of the content and a member of the content in the sense that it reflects the degree to which the inmate is weather the first of the control of the control of the property of the control of prepared to adjust to parole release (Id., at 15; In re Minnis (1972) - พระบิวาที่ โดยที่ได้ มีเกิด ที่ได้เกิด การ (ค.ศ. พิวาสาร์) ในสิทธิสัตว์ (และเลิกัสการ์) และ เลิก และ เลิก และ 7 Cal. 3d 639, 645 [in prison conduct and potential for mehabilitation de l'arrent d'adante l'arent de l'archoles de l'archoles de l'archoles de l'arrent es de la cilia l'archoles d are of "paramount importance"). Thus, "[p]arole decisions are based constituents, torp with property with the periods of other entries entry ad by consider between in large measure on occurrences subsequent to the commission of the Inditional regression and fit is staff on the decision, entitle own in reserved in discusoffense" (In re Rodniguez (1975) 14 Cal.3d 639, 652). As it was LOUIS AND THE CONTRACT OF THE STATE OF THE CONTRACT OF THE CON observed in In re Andrade (2006) 141 Cal.App. 4th 807, 823, Pollak J., dissenting, "This record, like that in numerous recent cases,

strongly suggests that California parole authorities are losing sight of That fact. The low for the control of but I sale to be the control of (1994) The Third Appellace District put it whisly: "The state now places gnearen importance on punishment as the punpose of imprisonment. (Pen. Code, S-1170, subd. (a)(1)) (In re-Monnall (2002) 102: with For denting agent, Inc. wheelise a for exclete the factorise and a product Gal. App. 4th 280, 292). The court continued With respect to person servenced to indeventuace terms, the purpose of punishment is the the first the commence of the control of the contro savisfied by requirement of service of a minimum period before the TWEET TO I HELD LOST IN Transformation of Committee of the to profess of the following and eligibility for parole and, when suivable for parole, by the ("") เดอมหารีกระบบ ราที่อะหารองโกร ให้เกาะเกาะสมมารถโดยเกาะสมาธิบับ อนุเกอห์สาด เป็นได้ The strain the sale see devermination of a release date in a manner that will provide uniform The first from District of the Mill State of the property of the second terms for offenses of similar gravity and magnitude with respect with this for a state of a will a summer and a six con the to their threat to the public" (Id.; see also Sanchez v. Kane (C.D. Cal. 2006) 444 F.Supp.2d 1049, 1062-1063 ["if the Governor's decision to deny parole based on the nature of the offense is permitted to when he had now he had to had been properly result to a proper to the late of the late had been been been stand, contrary to the parole statutes which logically measures parole gen bebrie ver of the period and the first of the second and the original second eligibility on the neformation of the phisonen after a prescribed Aberon of the analysis of the benefit of period of punishment, parole eligibility is an impossibility, not Trong to the transfer of the first terminal for the first terminal f a possibility. The panole statutes do not vest the [Executive] with Village State and they ware all nother of tener as his mercent of recognizations as her

Assuming, however, the Board/Governor can neury the case and make an independent finding of "premeditation," the question now becomes is the offense "particularly egregious" for a first degree munder? It is one matter if the munder "was particularly egregious for a second degree munder, it is another matter whether any evidence would support the same conclusion for a first degree munder" (In re Rosenknantz, supra, 29 Cal.4th, at 679, concurring, Moreno, J.).

Staring the munder is "especially callous," however, is not

enough because every munder can be described as a callous disnegard for the suffering of another (see In re. Lee, supra, 143 Cal. App. 4th 1400. 49 Cal. Rath. 3d, at 937-939, caraloging cases to serve as a 191 . "yandstick" as to what constitutes "panticulanly heinous, atnocious The figure of the transfer of the second or cruel"; see also Rosenkrantz v. Marshall, supra, 444 F. Supp. 2d, Carles that to be all the entrients and the private of the case of the case the case the case of the c ar 1082-1083). (The only statutony meason to deny Peririoner panole the traction of the agreet the track course post of the second to see in the table is the "cining and gravity" of the offense (Penal Code S 3041(b)). This Count has taken this to mean an independinately sentenced the Real of the exchange of the constitution of the track to be a constitution of prisoner is to be granted parole unless the prisoner "is presently roo dangerous ro grant a fixed parole release dare" (In re Dannenberg Mary Brown with a relation of the reservoir (2005) 34 Cal.4th 1061, 1080; see also Sass v. California Board of CONTRACTOR STORE STATE CALLY CONTRACT TO SERVICE W. Oak Carry Prison Terms (9th Cin. 2006) 461 F.3d 1123, 1135, Reinhandt, Cincuit The second of the second of the second Judge, dissearing [evidence must show current threat to public safery). "Thus, the Board/Governor, in reviewing a suitability 149 Cal. Rpgr.3d, ac 937); (a. ra bhapacia (2005) 135 Cal. 11. (ch 117) decermination, must remain focused not on circumstances that may or a control of the book of the state of the be aggnavating in the abstract but, nather, on facts indicating that a so in partie his carpinopas and I had the being relied nelease currently poses 'an unreasonable nisk of danger to society' (§ 2402, subd. (a); accord Pen. Code, § 3041, subd. (b)" (In re Elkins (2006) 144 Cal.App.4th 475, 50 Cal.Rptn.3d 503, 521). See also Biggs v. Tenhune (9th Cin. 2003) 334 F.3d 910; Irons v. Warden of California a construction of the profession of the top of the top of the State Prison-Solano (E.D. Cal. 2005) 358 F. Supp. 2d 942; Manshall sale transfer addition to a facility to a v. Lansing (3rd Cir. 1988) 839 F.2d 933; U.S. ex rel Farese v. Lucher (3rd Cir. 1992) 953 F.2d 52; Dunn v. United States Parole Commission or interior and in all companies and the found and to the (10th Cin. 1987) 818 F.2d 743; Quaglito v. Sullivan (D.Minn. 1989) 719 F. Supp. 860. The judges in these cases are jurists of reason who have henerofone addressed the question of static factors of the The subject to be a trace of the state want of trace of colors are extensive crime having no relevance over time in predicting current and the later than a common that the control of the dangerousness.

the Governor, reverses, pro forma.

Simply, the Board/Governor may not rely upon "unreasonable inferences" to support a decision, and an "inference is not reasonable if it is based only on speculation" (People v. Holt (1997), 15 Cal.4th 619, 669). The Governor's decision made no national connection between the commitment offense and Petitioner's current threat to public safety, the offense no longer being reliable evidence reducing the Governor's decision to speculation, violating Petitioner's right to due process.

GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION FOR THE GOVERNOR OF CALIFORNIA TO REVERSE PETITIONER'S GRANT OF PAROLE WHEN PETITIONER ENTERED INTO A CONTRACT WITH THE STATE OF CALIFORNIA FOR SECOND DEGREE MURDER AND HAD SATISFIED THE LEGISLATIVELY PRESCRIBED PUNISHMENT FOR THE OFFENSE AND THERE WAS NO EVIDENCE PETITIONER IS A CURRENT THREAT TO PUBLIC SAFETY?

Peririoner incorporates by reference from his writ of habeas corpus, pages 23-26. In short.

Peritioner was charged with murder in violation of Penal Code § 187, the murder of a human being with malice aforethought. The state offered a plea agreement with Peritioner to plead guilty to the minimum elements of second degree murder for an indeterminate term of 15 years to life.

"[P]arole applicants in this state have an expectation that they will be granted parole" (In re Rosenkrantz, supra, 29 Cal.4th, at 654). Peritioner having entered into a contract with the state to be punished for second degree murder, has a heightened expectation of being granted parole within the ligislatively prescribed punishment for second degree murder, in accord with the elements of the offense

Our state appellace counts are coming to the same conclusions as held by federal courts for years. Opined in In me Score II (2005) 133 Cal. App. 4th 573 : 594-595. If ns. onfured:

The Governor's assumption that a prisoner may be deemed unsultable for release on the basis of the commitment offense 'alone' is correct [citation], but the proposition must be properly understood. The commitment offense is one of only two factors indicative of unsuitability a prisoner cannot change (the other being Previous Record of Violence'). Reliance on such an immurable factor 'withour regard to or consideration of subsequent circumstances' may be unfair [ciration]; and runs contrary to the rehabilitative goals espoused by the prison system and could result in a due process violation. [Citation.] The commitment offense can negate suitability only if circumstances of the crime reliably established by evidence in the record particularly indicate that the offender will present an unreasonable risk if released from prison. Yev, the predictive value of the commitment offense may be very questionable after a long period of time. [Ciration.] Thus, denial of release based solely on the basis of the gravity of the commitment offense warrants especially close scrutiny."

See <u>In re Weider (2006)</u> Cal.App.4th , 2006 DJDAR 15795, 15802 (DJDAR 12/6/06); In re Elkins, supra, 144 Cal.App.4th 475, 50 Cal. Rprn. 3d, ar 518, 520, 521; In ne Lee, sugna, 40 Cal. App. 4th 1400, 49 Cal. Rptn.3d, at 937); In re Shaputis (2005) 135 Cal. App. 4th 217, 231-232 [accord, after 15 to 20 years the commitment offense has បស់ស៊ីលី ខ្លាំងដែលពីលើសនាស់ អ៊ីលប់នៅការអាចការប្រជាពីលាននៅការប្រជាពីការប្រជាពីការប្រជាពីការប្រជាពីការប្រជាពីការប zero predictive value of future dangerousness and therefore is not neliable evidence; thus, parole decisions must be based on current threat to public safety.] Cf. In re Andrade (2006) 141 Cal.App.4th 807 [after 14 years the appellate court relied on commitment offense co sustain denial of parole.] Vintually, all of the Governor's decisions to reverse the Board's findings of suitability for panole, The second secon Frankling Hall Call States and States and States "ir appears that gubernatorial neversals of Board decisions granting SUPERIOR CONTROL OF THE SECOND parole are most often based solely or primarily on the gravity of The condition is not distributed and the above the state of the contract of th the inmare's offense" (In me Scorr II, supra 133 Cal.App.4th, at 594 fn. 7). Peririoner has been imprisoned for 18 years, the commitment offense having zero neliability, and the Governor's the control of a filter of the sale of the property of the galactic garage nevensal of his panole nelease date was no different than the others

as pled, not for how it may have been charged and certainly mot to be transmuted by Executive flat to life without the possibility of parole.

"A negotiated plea agreement is a form of contract, and it is interpreted according to general contract principles" (citations) (In re Shelton (2006)

Peririoner did nor pled guilty to the minimum elements of the offense to later be subjected to the Executive nullifying the contract and retrying the case without Peririoner being afforded the constitutional safeguards of a trial (see Appnendi v. New Jersey (2000) 530 U.S. 466, 485; Blakely v. Washington (2004) 542 U.S. ____, 124 S.Ct. 2531, 2537 [a defendant can only be "punished on the basis of facts reflected in the jury verdict or admitted by the defendant"]).

Although the constitution does not prohibit a state from transferring sentencing functions from a judge to a parole agency for indeterminately sentenced defendants (i.e., In re-Roberts (2005) 36 Cal. 4th 575, 587-588 ["In procedural and substantive terms, this ាន នេះ បាន បាន បាន បាន សំណើកស្រាប់នេះ បាន than it is the contract to any fall and it type of determination is more analogous to the sentencing determination made by the count"]), "the existence of this power does not imply a further power in the State to immunize its acts, Contract to the Address of the The second secon through the administrative agency, from the strictures of the Fourteenth Amendment" (Sturm v. California Adult Authority (9th Cir. at little bear from the color of the first the test of the first test to 1967) 395 F.2d 446, 449). It has long been held that this nation is "'committed to a government of laws and not of men,' under which The service of the control of the service of the se

absolutely fair and orderly, and the constitutional safeguards relating to the integrity of the criminal process attend every stage of a criminal proceeding. (Carey v. Musladin (2006) 549 U.S. 2006 DJDAR 16061, 16064 c.2 (DJDAR 12/12/06) (citations omitted)).

Peririoner entered into a contract for the minimum elements of second degree murder. "Second degree murder is defined as the unlawful killing of a human being with malice aforethought" (People v. Neiro Benirez (1992) 4 Cal.4th 91, 102); cf. Calvillo -Silva v. Home Grocery (1998) 19 Cal.4th 714, 733 fn. 14 ["For purposes of first degree murder, a deliberate and premeditated killing concemplates that 'the killing was preceded and accompanied by a clear, deliberare invent on the defendant to kill, which was the result of deliberation and premeditation" 1). The Executive cannot not now, by Executive fiat, sub rosa, retry the case and change the contract because it doesn't like the terms. If that be the case, and the District Attorney foresaw this and secretly left this possibility open and gave nothing in exchange for this plea, the he would have berrayed the ethical duty as a nepresentative of the government to conduct the government's business fairly and honestly (In re Ibarra (1983) 34 Cal.3d 277, 289 [illusory concessions offered by the state "constitute a species of fraud"; see also Santabello v. New York (1971) (404 U.S. 257, 261 [plea bargain contracts presuppose fairness in securing agreement between an accused and the prosecutor"]).

CONCLUSION

For the foregoing reasons, this Court should grant review, on

ing the alternative, in that the lover court epinion is not reasonable in light of the facts, menely stubben stamping the Governor's decision and making no arrempt to decempine if Peritionentis a curpent threat ro public safery; remand; the habea's perition, for a reasoned decision inglight of the actual evidence, under the "preponderance of the our evidence "istandand", ero nel corrobado e e el el ferroba en marel gabas

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